

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition for Waiver of Section 64.402 of the)
Commission's Rules)
_____)

WT Docket No. ~~96-86~~ **01-333**

PETITION FOR PARTIAL WAIVER—EXPEDITED ACTION REQUESTED

Pursuant to Section 1.3 and 1.925 of the Federal Communications Commission's (Commission) rules, VoiceStream Wireless Corporation (VoiceStream) requests that the Commission immediately grant a temporary partial waiver of Section 64.402 of the Commission's rules in order to allow it to provide a priority access service voluntarily to federal, state and local governments on an expedited time schedule.

I. INTRODUCTION

On July 13, 2000, the Commission released its Second Report and Order in WT Docket No. 96-86, allowing commercial mobile radio service (CMRS) providers voluntarily to offer Priority Access Service (PAS) to public safety personnel at the federal, state and local levels to help meet the national security and emergency preparedness (NS/EP) needs of the nation.¹ In that order, the Commission found that

¹ The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules

given the need for a PAS system that would ensure that NS/EP personnel would be able to access the wireless system in emergency situations, and the request for such PAS by NS/EP personnel, it was in the public interest to permit CMRS systems to provide PAS.²

For the past year, VoiceStream has been working with the Office of the Manager of the National Communications System (NCS) and GSM North America to standardize and implement PAS in GSM networks in the United States. Since the events of September 11, 2001, VoiceStream has been meeting with NCS and its service integrator, DynCorp, to determine what PAS capabilities could be provided using the GSM technology for the cities of Washington, D.C. and New York City in an Immediate, expedited phase (within 60 days), and what could be developed and implemented in a Near term phase (by the end of 2002) on a nationwide basis.

II. TECHNICAL PROPOSAL

VoiceStream originally proposed a solution for the Immediate phase utilizing the load-shedding capability existing in all GSM equipment it has deployed. This proposal was developed to meet the DynCorp and NCS request for off-the-shelf capabilities that could be deployed quickly and could increase the likelihood of successful access to radio resources for NS/EP wireless users. This capability, although enabling priority access to radio channels using a graceful cascading of service denial to non-NS/EP users, does not provide many of the elements necessary to meet the U.S. requirements for priority access

and Requirements For Priority Access Service, *Second Report and Order*, WT Docket No. 96-86, FCC 00-242, 15 FCC Rcd 16720 (2000) ("PAS Order")

² *Id.*, at 16728 (¶ 15).

in accordance with the policies and procedures set forth in Appendix B to Part 64 of the Commission's rules.³

After further consideration and consultation with vendors, VoiceStream has determined that it is possible to immediately deploy, in Washington, D.C. and New York City, a more full featured priority access capability called Enhanced Multi-Level Precedence and Preemption (eMLPP). The eMLPP capability provides queuing of the priority call for the next available resource when radio or network resources are not available. It offers seven different levels of precedence for call set-up and for call continuity in case of handover.⁴ It is a subscription-based service, with service activation initiated upon account activation. This will not require interaction with VoiceStream in the event of an emergency (i.e., the service is "always on" once activated). eMLPP capabilities are available in case of roaming, both nationally and internationally, if supported by the visited GSM networks.

At invocation of the eMLPP priority level on a call set-up, the network notes the call priority related to the call and decides on the respective actions to be taken, i.e., on queuing priority and fast call set-up procedures. If an appropriate radio channel is available, the system assigns it as normal. If no channels are available, the system performs queuing according to the priority levels associated with the subscription.

³ See 47 C.F.R. § 64.402 and Part 64, Appendix B.

⁴ Even though there are at maximum seven priority levels, the two highest levels are reserved for network internal use, e.g., for emergency calls or the network related service configurations for specific voice broadcast or voice group call services. These two levels can only be used locally, i.e., in the domain of one mobile switching center (MSC). The other five priority levels are offered for subscription and can be applied globally, e.g., on inter-switch trunks, if supported by all related network elements, and also for interworking with ISDN networks providing the MLPP service.

III. REQUEST FOR WAIVER

With handsets equipped with appropriate signaling capabilities and menu options (eMLPP-capable mobiles), the precedence level may be selected by the user on a per call basis. The user may select any precedence level up to and including his or her maximum authorized precedence level. The maximum authorized precedence level is to be stored on the Subscriber Identity Module/Universal Subscriber Identity Module (SIM/USIM), and the handset will check that only an authorized level is used for set-up.

However, eMLPP-capable mobiles are not commercially available at this time. Sony/Ericsson has indicated that it can provide commercially available handsets with eMLPP capability for GSM operators in the United States within 60-90 days.

Other mechanisms for allowing a choice of priority levels on a per-call basis that do not require specific eMLPP-capable handsets are being explored. Until eMLPP-capable handsets or other mechanisms are in place to allow an NS/EP user to select a precedence level at call initiation, all calls from NS/EP subscribers will use the maximum authorized precedence level stored on the SIM/USIM at the time of account activation.

Therefore, in order to begin voluntarily offering priority service immediately in Washington, D.C, New York City and other cities that VoiceStream serves, as deemed necessary for the safety and security of the United States, VoiceStream requests a partial waiver of Section 64.402.⁵ The requested waiver should take effect immediately, and provide to VoiceStream the same liability protection set forth in paragraphs 22-24 of the PAS Order. The waiver should remain in effect until eMLPP-capable handsets are

⁵ This waiver should be fairly short-term, as eMLPP-capable mobiles will soon be available from Sony/Ericsson. The eMLPP-capable mobiles will allow the precedence level to be selected by the user on a per call basis, thus fully meeting the requirements set forth in the Commission's PAS Order.

commercially available, or alternate mechanisms for allowing a choice of priority levels on a per-call basis are implemented.

IV. LEGAL ANALYSIS

VoiceStream meets the applicable legal standards for receipt of a limited waiver of the PAS rules under the present circumstances. Pursuant to Section 1.925 of the Commission's Rules, the Commission may grant a waiver if (a) the underlying purpose of the rule would not be served or would be frustrated by its application, and grant of the waiver would be in the public interest; or (b) in view of the circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶

VoiceStream meets both parts of this provision. As VoiceStream noted in its comments on the Verizon Wireless Petition for Waiver,⁷ the technology does not exist at the present time for CMRS operators to meet all of the requirements set forth for PAS by the Commission. Nonetheless, in view of the pressing needs of the NS/EP community, CMRS operators have worked to develop interim solutions to meet the immediate and near term needs of federal, state and local officials.

As Verizon Wireless has previously demonstrated,⁸ rigid application of the current PAS rules would not serve to meet the current telecommunications needs of the nation's public servants -- the very purpose underlying the Commission's PAS Rules. NCS has clearly expressed to CMRS operators in its requests for proposals its emergency telecommunications requirements, and VoiceStream has provided the details as to how it

⁶ 47 C.F.R. § 1.925(b).

⁷ Comments of VoiceStream Wireless, WT Docket 01-320 (filed November 20, 2001) at 2-4.

⁸ Verizon Wireless Petition for Waiver (filed November 2, 2001) at 5-7.

can meet the government's requirements. However, as mentioned previously, VoiceStream will not be able to allow users to select call precedence at call invocation as required under the PAS Rules,⁹ necessitating the need for limited relief. Denial of VoiceStream's request for a limited waiver of the PAS Rules would not only frustrate the objective of those rules -- to satisfy the emergency telecommunications requirements of NS/EP users -- but would also hardly serve the public interest in ensuring an effective governmental telecommunications network when threats emerge to the nation's safety and security.¹⁰ Based on discussions between VoiceStream and various government agencies, we anticipate a statement of their support of VoiceStream's request to be forthcoming, which should further attest to the fact that a limited waiver would serve the public interest.

V. CONCLUSION

The Commission should grant VoiceStream's request for a partial waiver of Section 64.402 and Part 64, Appendix B of the Commission's rules. The waiver is necessary on a temporary basis in order to allow VoiceStream to provide PAS voluntarily to NS/EP users, until all elements of eMLPP are implemented for GSM to permit full compliance with the Commission's rules. Grant of this limited waiver is in the public interest, as it will allow the immediate deployment of a priority access service that will

⁹ See 47 C.F.R. Part 64 App. B, ¶ 2(c).

¹⁰ Indeed, VoiceStream urges the Commission to accept the suggestion of the Cellular Telecommunications and Internet Association (if it has not done so already in the context of its consideration of the Verizon request) to use VoiceStream's request as the opportunity to rule more generally that an agreement between NCS and any licensed CMRS operator for the provision of PAS is *prima facie* lawful and does not require an additional waiver from the Commission. See Comments of the Cellular Telecommunications and Internet Association, WT Docket No. 01-320 (filed November 21, 2001) at 4.

evolve to a nationwide deployed capability. In granting the partial waiver, the Commission should provide to VoiceStream the same liability protection that is extended to CMRS providers in the Commission's PAS Order. VoiceStream requests expedited treatment of this petition.

Respectfully submitted,

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